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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

8 UNITED STATES OF AMERICA,

Plaintiff,

Case Nos.: 4:24-CR-6018-MKD-1
4:24-CR-6018-MKD-3

V.

VICKY VILLALOBS (1), and
SAUL GARANZUAY (3),

Notice of Potential Conflict of Interest

Defendants.

14 Plaintiff, United States of America, by and through Vanessa R. Waldref,
15 United States Attorney for the Eastern District of Washington, Brandon L. Pang
16 and Rebecca Perez, Assistant United States Attorney for the Eastern District of
17 Washington submits the following Notice of Potential Conflict of Interest.

PROCEDURAL BACKGROUND

19 On June 21, 2024, co-defendants Villalobos and Garanzuay were indicted by
20 a Grand Jury in the Eastern District of Washington. On July 24th, 2024, defense
21 counsel Nicholas Marchi was appointed to represent Mr. Garanzuay. ECF 29. On

1 July 25, 2024, defense counsel Janelle Carman-Wagner and Ashley Kuhlberg filed
2 a notice of appearance in Ms. Villalobos' case. ECF 43.

3 At the time of the indictment, the United States was aware that Mr.
4 Garanzuay had a pending state case in Walla Walla County in case number 23-
5 100140-36. That case involved various drug offenses, all based on controlled buys
6 allegedly occurring on May 24, 2023. The United States believed, and continues to
7 believe, that the state case is completely separate from the federal investigation.
8 Mr. Garanzuay was not investigated federally until early 2024, and nothing in the
9 state probable cause reports involve any co-defendants, witnesses, or individuals
10 who may also be involved in the federal case.

11 Around the time of arraignments of both Mr. Garanzuay and Ms. Villalobos
12 on July 25th, 2024, the United States became aware that Ashley Kuhlberg
13 represents Mr. Garanzuay on his state case. Therefore, counsel for Ms. Villalobos
14 in the federal case represents co-defendant Mr. Garanzuay in his unrelated state
15 case. This potential issue was raised with Magistrate Judge Eckstrom prior to the
16 detention hearings held on August 2, 2024. Defense Counsel Carman-Wagner
17 informed the Court that she had obtained signed waivers from both Ms. Villalobos
18 and Mr. Garanzuay. Based on that, no action was taken.

19 Recent conversations with assigned defense counsel have caused the United
20 States to review the potential conflict issue. The United States does not believe a
21 conflict exists. Ms. Carman-Wagner has recently confirmed that signed waivers of

1 conflict from both defendants, and she has not discussed Mr. Garanzuay's case
2 with Ms. Villalobos. However, out of an abundance of caution, the United States
3 hereby files this notice to make this Court aware of the potential issue. The United
4 States is not seeking a hearing or requesting any action by this Court, but wishes to
5 keep this Court informed. Both defense counsel have been informed of the United
6 States' intention in filing this notice.

GENERAL LAW OF ATTORNEY CONFLICTS

A defendant is entitled to conflict-free counsel and the United States, while careful not to comment on defense counsel, has an obligation to advise of potential and actual conflicts of interest. Prosecutors are obligated to alert the court to defense counsel's actual conflicts of interest and potential conflicts of interest. See *United States v. McKeighan*, 685 F.3d 956, 966 (10th Cir. 2012). This duty is rooted in the defendant's right to effective and conflict representation and the prosecutor's role as "an administrator of justice, an advocate, and an officer of the court." *McKeighan*, 685 F.3d at 966 (citing ABA Standards for Criminal Justice 3-1.2(b) (3d ed.1993)). Prosecutors are routinely exhorted to advise the court of any conflicts at the earliest possible stage of the proceedings and as circumstances warrant. See e.g., *United States v. Malpiedi*, 62 F.3d 465, 470 & n.3 (2d Cir.1995); *Cerro v. United States*, 872 F.2d 780, 787 (7th Cir. 1989).

III

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1 The Sixth Amendment ensures a defendant's right to conflict-free counsel,
2 which includes both actual conflicts as well as potential conflicts. An actual
3 conflict of interests arises when an attorney "actively represented conflicting
4 interests." *Maiden v. Bunnell*, 35 F.3d 477 (9th Cir. 1994) (quoting *Strickland v.*
5 *Washington*, 466 U.S. 668, 670 (1984)). Actual conflicts require proof that the
6 interests of a client are in direct opposition of those of the attorney. *Bonin v.*
7 *Calderon*, 59 F.3d 815, 825-827 (9th Cir. 1995). It is insufficient to show that the
8 attorney's and client's interests may conflict. *Bonin*, 59 F.3d at 825-27 An "actual
9 conflict is defined by its impact" on counsel's representation. *Hovey v. Ayers*, 458
10 F.3d 892, 908 (9th Cir. 2006). The inquiry into whether an attorney has an actual
11 conflict requires a deep, fact-specific examination of the case "with a particular eye
12 to whether the attorney will, in the present case, be required to undermine,
13 criticize, or attack his or her own work product from the previous case." *Maiden*,
14 35 F.3d at 480-81. The inquiry is factually based and does not focus on the
15 characterization or type of conflict presented. *United States v. Walter-Eze*, 869
16 F.3d 891, 901 (9th Cir. 2017).

17 Potential conflicts refer to the interests of "defendants that may diverge at
18 some point to place the attorney under inconsistent duties." *Cuyler v. Sullivan*, 446
19 U.S. 335, 356 n.3 (1980). Accordingly, there is an incentive by the courts to
20 inquire even into potential conflicts. See *Mickens v. Taylor*, 535 U.S. 162, 173
21 (2002) ("in cases where the potential conflict is in fact an actual one, only inquiry

1 will enable the judge to avoid all possibility of reversal by either seeking waiver or
2 replacing a conflicted attorney.”). The inquiry into a conflict is fact-intensive, but
3 not every situation where an attorney may have knowledge of, or even has
4 represented, someone involved in a defendant’s case will lead to the finding of a
5 conflict. See e.g. *United States v. Huynh*, No 08CR2288 BTM-1, 2009 WL 799406
6 (S.D. Cal. March 24, 2009) (holding that risk of potential conflict based on
7 attorney’s former representation of government witness did not warrant
8 disqualification); *United States v. Anderson*, 790 F. Supp. 231 (W.D. Wash 1992)
9 (holding that a defendant’s joint defense agreement, which gave counsel limited
10 access to potential government witnesses, did not require disqualification).

11 In the situation where parties have determined a conflict may exist, either
12 actual or potential, in some circumstance “an attorney may proceed despite a
13 conflict if the defendant has made a voluntary, knowing, and intelligent waiver.”
14 *United States v. Martinez*, 143 F.3d 1266, 1269 (9th Cir. 1988) (internal citations
15 omitted).

16 As noted above, the United States does not believe an actual conflict exists.
17 Mr. Garanzuay’s state case and the federal case are unrelated. However, the United
18 States acknowledges that drug cases can sometimes relate in ways not anticipated
19 at the time of indictment and may involve personal or other connections unknown
20 to the assigned AUSAs. But with the waiver of potential conflicts by both Ms.
21 Villalobos and Mr. Garanzuay and with the information currently possessed by the

1 United States, the United States is not requesting any action and believes both
2 assigned defense counsel may continue with representation of their respective
3 clients.

4 Dated this 3rd day of December 2024

Vanessa R. Waldref
United States Attorney

s/ Rebecca Perez
Rebecca Perez
Assistant United States Attorney

CERTIFICATION

12 I hereby certify that on December 3, 2024, I electronically filed the
13 foregoing with the Clerk of the Court using the CM/ECF System, which in turn
14 automatically generated a Notice of Electronic Filing (NEF) to all parties in the
15 case who are registered users of the CM/ECF system.

s/ Rebecca Perez
Rebecca Perez
Assistant United States Attorney